MARATHON OIL COMPANY,
UNION OIL COMPANY OF CALIFORNIA

IBLA 79-392 Decided October 22, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, relating to oil and gas lease rental rates for lands eliminated from the Beaver Creek Unit Agreement which are within the known geologic structure of a producing oil or gas field. Lease Nos. A-028078, A-028083, A-028120, A-028118.

Dismissed.

1. Oil and Gas Leases: Rentals

   It is not the transfer of the lease account between the Bureau of Land Management and the Geological Survey which determines the rental amount; rather it is the status of lease that determines which agency maintains the account and what rental applies.

2. Appeals -- Rules of Practice: Appeals: Dismissals

   Where a decision by an official of the Bureau of Land Management is interlocutory in nature, and the future implementation of the decision is contingent upon the occurrence of an event not scheduled, an appeal from such decision will be dismissed in the absence of any showing of necessity for immediate resolution.

APPEARANCES: Fritz G. Nagel, Division Exploration Manager, for Marathon Oil Co.; Robert T. Anderson, District Land Manager, for Union Oil Co. of California, both of Anchorage, Alaska.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision dated March 13, 1979, the Alaska State Office of the Bureau of Land Management (BLM) informed Marathon Oil Company and Union Oil Company of California that certain leases or portions of leases held by them and eliminated from the Beaver Creek Unit Agreement No. 14-08-0001-8868, being on the known geologic structure of a producing oil or gas field (KGS), would have their respective rentals increased beginning with the next lease year. The decision further stated, "The accounting function of all of the leases subject to this decision will remain with the U.S. Geological Survey office until further notice."

On April 10, 1979, however, BLM issued a second decision which modified the earlier one, saying:

> As stated in the Bureau decision of March 13, 1979, Rental Rate Increased On KGS Lands, rental rate for leases wholly or partly within a known geologic structure is $2 per acre or fraction thereof. This rental rate will only take effect, however, when and if the accounting function is transferred to the Bureau. So long as a portion of the lease remains within a producing unit, the accounting function remains with the U.S. Geological Survey. As established in the ruling by the United States District Court for the District of Alaska in Standard Oil Company of California v. Hickel, 317 F. Supp. 1192, and affirmed sub nom. Standard Oil Company of California v. Morton, 450 F.2d 493 (9th Cir. 1971), the eliminated lands will retain the rental rate applicable to nonparticipating acreage within the unit rather than the higher rate applicable to nonunitized lands within a known geological structure.
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> Accordingly the acreage within the participating area is on a minimum royalty basis; the acreage outside the participating area is on a rental basis at the rate of 50 cents per acre, or fraction thereof.

Marathon and Union have jointly appealed from this decision, asserting, in effect, that the transfer of a lease account from one Interior agency to another, should that occur, could not influence the amount of rental lawfully owed under the terms of the lease. Appellant argues specifically that:

> The purpose of this notice is to appeal that portion of the modified decision which states and infers that a transfer of accounting function from one governmental agency to another will terminate recognition of a ruling court case, namely Standard Oil Company of California v.

> Hickle, supra, and thereby permits implementation of a higher rental rate in violation of lease stipulations.
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> To allow the modified decision to go unchallenged might infer acquiescence to some legal soundness as to the position taken in the modified decision.
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> Accordingly, the applicants would assert that the case of Standard Oil Company of California v. Hickle, supra, is applicable to the leases under consideration in this case, notwithstanding the fact that the agency may at any time in the future transfer the accounting function to another governmental agency and that the lesser rental rate as to leases located partly within and partly outside the contracted boundary as to acreage outside the Unit participating area remain at the 50 cents per acre rental rate, as per the lease stipulation and that the modified decision of the Bureau of Land Management dated April 10, 1979, be so corrected to conform to law.

[1] Apparently appellants have not understood the import of what BLM was trying to tell them. It is not the transfer of the lease account which supplies the impetus for the change in the rental rate; rather it is the status of the lease that determines whether the lease account is administered by the Geological Survey or BLM. Generally the Survey administers the accounts of leases which are considered to be in a producing or producible status, and BLM administers the accounts of those leases which are not. As noted in Standard Oil Company of California, supra at 1195, "It is clear that non-producing leases excluded in their entirety from a contracted unit are subject to a delay rental of $1 per acre 1/ if they lie over a known geologic structure of a producing field." In such event the lease accounts would be transferred from Survey back to BLM, which would collect the higher rental. If and when the subject leases, or any of them, are excluded in their entireties from the unit or are classified as non-producing, the same will occur. It is clear that BLM does not believe it can increase the rental merely by arbitrarily shifting the administration of the lease accounts. As it said in the decision appealed from:

1/ The leases before the Court in that case were issued at a time when the KGS rental was $1 per acre. The leases before us now are subject to a $2 per acre KGS rental.

> This [$2 per acre] rental rate will only take effect, however, when and if the accounting function is transferred to the Bureau. So long as a portion of the lease remains within a producing unit, the accounting function remains with the U.S. Geological Survey.

Appellants' concern, therefore, appears entirely without foundation. Moreover, the holding of the court in Standard Oil Company of California v. Hickel, supra, was implemented by the decision of this Board in Standard Oil Company of California, 5 IBLA 26, 79 I.D. 23 (1972).

[2] This appeal is interlocutory in nature. Implementation of the BLM decision is contingent upon the occurrence of events which are not scheduled. If and when the subject rentals are increased, that action will give rise to the right of appeal. Appellants have not shown any necessity for the Board to resolve the issue in advance of the prospective event. Such interlocutory appeals must be dismissed. Elko County Board of Supervisors, 29 IBLA 220 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN PART

Appellants contend that the BLM modifying decision from which they appeal stands for the proposition that the rental rate is determined by which agency has the accounting function. The majority opinion has, in effect, explained what the effect of the BLM decision should be, namely, that it is the status of the leased lands that determines the rental rate or whether a portion of the lease is in a royalty basis. Because I believe BLM's decision is susceptible of some misinterpretation, I would expressly clarify it to make this manifest. To the extent BLM's decision may be read as determining that the jurisdiction over the lease accounts at a given time determines the rental rate, it is an express ruling and appealable. Thus, I would clarify or modify BLM's decision being appealed, and dismiss appellants' appeal as interlocutory only to the extent it may be read as applying to future events.

Joan B. Thompson
Administrative Judge